

**Department of
Veterans Affairs**

Memorandum

Date: MAY 20 2014
From: Director, VHA FOIA Office
Subj: Release of FOIA Information (VAIQ 7477489)
To: Network Directors (VISN 1-23)

1. On November 5, 2013, the Veterans Health Administration (VHA) Freedom of Information Act (FOIA) Office issued guidance on release of FOIA information. This memorandum supersedes the November 5, 2013 guidance.
2. As of the date of this memorandum, all VHA program and field office component FOIA Officers must notify the VHA FOIA Office upon receipt of Substantial Interest FOIA Requests.
3. The definition of a Substantial Interest FOIA Request is a request for information in which there has been or is likely to be substantial public interest. This would include but is not limited to the following types of requests, regardless of the requester: (1) those related to a threat to the public health; (2) high profile local or national incidents or situations involving VA beneficiaries, employees or officials; and (3) incidents involving an alleged breach of the public trust (ex. waste, fraud or abuse).
4. Upon receipt of a FOIA request, the VHA program or field office component FOIA Officer will review and make a determination if the request meets the definition of a Substantial Interest FOIA Request. If the request meets the definition, the FOIA Officer must notify the VHA FOIA Office of the request following the designated procedures in Attachment A. This notification must be sent on the same business day as receipt of the FOIA request. Under no circumstance will a VHA program or field office component FOIA Officer release records responsive to a Substantial Interest FOIA Request without following the procedure set forth in Attachment A.
5. Effective immediately and until further notice, all VHA program and field office component FOIA Officers are also required to notify the VHA FOIA Office of any FOIA request submitted by a member of the news media or a member of Congress (not related to constituent inquiries) regardless of whether it meets the definition of Substantial Interest FOIA Request. The notification email must follow the format outlined in paragraph 4 of Attachment A. The notification must be submitted the same business day as receipt of the FOIA request. The VHA FOIA Office will provide further direction to the FOIA Officer upon review of the request.

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6. Within one business day from the date of this memorandum, all VHA program and field office component FOIA Officers are required to review all assigned open FOIA requests. The FOIA Officer must notify the VHA FOIA Office of any open FOIA request submitted by a member of the news media, member of Congress (not related to constituent inquiries) or meeting the definition of a Substantial Interest FOIA Request. The notification email must follow the format outlined in paragraph 4 of Attachment A. The VHA FOIA Office will provide further direction to the FOIA Officer upon review of the request.

7. Under no circumstances should a VHA facility or program office deviate from the requirements outlined in this memorandum.

8. For additional information or any questions, please contact Timothy Graham, Director, VHA FOIA Office, 215-823-4146 or at Timothy.Graham@va.gov.


Timothy H. Graham

Attachment

ATTACHMENT A

Substantial Interest FOIA Request - Notification Process

1. Upon receipt of a FOIA request, the VHA program or field office component FOIA Officer, hereon referred to as VHA field FOIA Officer, must date stamp the request. If the incoming request does not meet the VA's requirements for a FOIA request, the VHA field FOIA Officer should work with the FOIA requester in an effort to assist the requester in rectifying the issue(s).
2. The VHA field FOIA Officer must enter the request in FOIAXpress within 1 business day of receipt.
3. On the same business day of receipt, the VHA field FOIA Officer must review the request and determine if the request meets the definition of a Substantial Interest FOIA Request. The definition of a Substantial Interest FOIA Request is:

Substantial Interest FOIA Request: A request for information in which there has been or is likely to generate substantial public interest. This would include but is not limited to the following types of requests - regardless of the requester: (1) those related to a threat to the public health; (2) high profile local or national incidents or situations involving VA beneficiaries, employees or officials; and (3) incidents involving an alleged breach of the public trust (ex. waste, fraud or abuse).

Examples of Substantial Interest FOIA Requests include but are not limited to:

Threat to the public's health – FOIA requests concerning Legionella/Legionnaires, Agent Orange and Burn Pits, etc.

High profile or national incidents – Delays in care, e.g., colonoscopies, purging of orders; concerns regarding equipment, e.g., serialization of reusable medical equipment, power outages affecting critical care locations; shootings at VHA location; etc.

Incidents involving an alleged breach of public trust – Large Privacy breaches; Administrative Investigative Boards concerning VHA Senior Leadership; misappropriations of VHA funds; etc.

Please note; a Substantial Interest FOIA Request does not take into consideration the FOIA category of the requester, e.g., news media, commercial, or all other. A Substantial Interest FOIA Request is based on the information/records being requested.

The definition of a Substantial Interest FOIA Request supersedes the definition of a Sensitive FOIA Request. All guidance issued by the VHA FOIA Office concerning Sensitive FOIA Requests in the November 5, 2013 memorandum, subject: Release of FOIA Information, are hereby invalid and are no longer to be followed.

4. If the VHA field FOIA Officer determines that the request meets the definition of a Substantial Interest FOIA Request, the VHA field FOIA Officer must submit a notification email to the VHA FOIA Office via the VHA FOIA Issues mail group in the Global

Address Listing (GAL). The Substantial Interest FOIA Request notification email must be sent on the same business day that the request was received. There are no exceptions for a delay in submitting this notification e-mail. The Substantial Interest FOIA Request notification email must use the following format:

To: VHA FOIA Issues

Email Subject: **Substantial Interest FOIA Request Notification: [insert facility name] – [insert FOIAXpress tracking number]**

Body of the email:

Attached to this email is a FOIA request received by the [insert facility name] from [insert requester's name and organization] on [insert date received]. The details pertaining to this request are outlined below:

Who: [insert name of requester]

Affiliation: [insert name of organization requester is affiliated]

What: Requesting the following:

[Transcribe exactly what the requester is seeking]

Assigned VHA FOIA Officer: [insert FOIA Officer's name]

Estimated Closure Date: [insert best estimate]

Attachment: Attach a scanned copy of the request.

5. The VHA FOIA Office will review the Substantial Interest FOIA Request notification and make a determination as to whether or not VHA Central Office senior leadership notification is required.
6. If VHA Central Office senior leadership notification is required, the VHA FOIA Office will instruct the VHA field FOIA Officer to submit the initial agency decision response to the VHA FOIA Office via the VHA FOIA Issues mail group in the Global Address Listing (GAL). The response email must use the following format:

To: VHA FOIA Issues

Email Subject: **VHA FOIA Office Review - Substantial Interest FOIA Request Notification: [insert facility name] – [insert FOIAXpress tracking number]**

Body of the email:

Attached to this email is a FOIA request received by the [insert facility name] from [insert requester's name and organization] on [insert date received]. The details pertaining to this request are outlined below:

Who: [insert name of requester]

Affiliation: [insert name of organization requester is affiliated]

What: Requesting the following:

[Transcribe exactly what the requester is seeking]

Assigned VHA FOIA Officer: [insert FOIA Officer's name]

Indicate Number of Processing Days Remaining or Number of Days in Backlog Status:

Attachments: Attach the following:

- a. A copy of the initial FOIA Request;
- b. The proposed Initial Agency Decision Letter;
- c. Copies of responsive records as the VHA field FOIA Officer intends to release them to the requester;
- d. Vaughan Index.

No release can be made from the Agency until the VHA field FOIA Officer receives an email from the VHA FOIA Office stating that the response may be released to the requester.

At no point should the VHA field FOIA Officer contact VHA Central Office senior leadership directly.

7. If VHA Central Office senior leadership notification is not required, the VHA FOIA Office will instruct the VHA field FOIA Officer to release the response upon completion of the disclosure determination.
8. As with all FOIA requests, the VHA field FOIA Officer must:
 - a. Prepare and send an Acknowledgement Letter within the statutory requirement of 10 calendar days to the requester.
 - b. Assign out search request to appropriate offices within the facility or Veterans Integrated Service Network (VISN). It is the expectation that all facility or VISN staff will comply with the FOIA Officer's request for records search.
 - c. Identify search parameters (including an identification of file systems, whether the systems are electronic or paper files and the search terminology utilized in

conducting the search) must be fully documented in the FOIA Officer's administrative record.

- d. The FOIA Officer shall review responsive records and make necessary redactions in accordance with the FOIA.
- e. Thoroughly document all withholding determinations within the administrative file.
- f. Prepare Initial Agency Decision (IAD) document withholding determinations made.
- g. All Substantial Interest FOIA Requests must follow the guidance outlined above.